

NTSB Order No. EA-4697

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 28th day of August, 1998

Respondent .

Docket SE-14912

Respondent has appealed from the oral initial decision of Administrative Law Judge Patrick G. Geraghty, issued on November 19, 1997, following an evidentiary hearing.<sup>1</sup> The law judge affirmed an amended order of the Administrator to suspend respondent's commercial pilot certificate for 25 days, on finding that respondent had violated 14 C.F.R. 91.203(a)(2).<sup>2</sup> The appeal

<sup>2</sup> Section 91.203(a)(2) prohibits operation of an aircraft without an effective U.S. Registration Certificate in that aircraft.

raises one issue only -- whether the Administrator's complaint was barred by the stale complaint rule at 49 CFR 821.33.<sup>3</sup> We affirm the law judge and find that it was not.

The Board's stale complaint rule provides that, in cases where lack of qualification is not at issue, the Administrator must pursue her investigations promptly so that a respondent has notice of them within a time after the alleged violation that still allows evidence to be developed and respondent's case to be made without unreasonable, prejudicial delay. That time, under the rule, is 6 months: no more than 6 months may pass between the event that gives rise to the complaint and issuance of the Notice of Proposed Certificate Action (NOPCA) or the complaint is subject to dismissal under rule 33. A "good cause" exception to the 6-month rule has been created in the case of the Administrator's delayed learning of the alleged violation. In such a case, the Administrator must show that she has expedited the handling of her investigation to minimize the potential harm to respondent in the delay. Administrator v. Brea, NTSB Order EA-3657 (1992).

In this case, there is no doubt that considerable time passed between the events that gave rise to the complaint and the issuing of the July NOPCA. The Administrator argued that, at some time between November 12, 1995, and January 11, 1996, respondent was the pilot in command of an aircraft that was not

---

<sup>3</sup> Prior to the hearing, the law judge denied respondent's motion to dismiss on this basis. A copy of that order is also attached.

registered to its actual owner and therefore did not have within it the registration required by § 91.203(a)(2). The parties agree that the critical date for rule 33 purposes is January 11, 1996, and compare that date to the July 31, 1996 issuance of the NOPCA. The Administrator, however, argues that she did not learn of the possible violation until May 3, 1996, and that she then expedited the investigation every step of the way.

Assuming that the May 3<sup>rd</sup> - July 31<sup>st</sup> period is the operative one, we agree with the law judge's conclusion that the Administrator has proven this point. Indeed, 1 out of the 3 months was taken by respondent's answer to the Letter of Investigation issued May 7, 1996. Respondent argues, however, that the date the Administrator should be considered to have been on notice is not May 3<sup>rd</sup> but much earlier -- January 1996, and the Administrator has not justified the January-to-July delay. We disagree.

The record establishes that, early in 1996, the Administrator had begun investigating respondent in connection with questions regarding the validity of his aircraft registration. The FAA had information suggesting that the corporation to whom an aircraft was registered did not legally exist. A Letter of Investigation dated March 4, 1996, was sent to respondent, and the investigation continued. The uncontroverted testimony establishes that it was not until May that the FAA became aware that respondent might also be piloting an aircraft that did not have an accurate registration in the

name of its current owner. This led to the instant suspension order (which makes no reference to respondent's earlier alleged failure to incorporate the entity named in the aircraft registration certificate).

The two matters are separate, involving different regulatory provisions. The Administrator's earlier investigation regarding possible regulatory violations does not require dismissal of a complaint issued later that is based on other information and other regulatory provisions. The Administrator's reply that respondent's approach would encourage premature prosecutions is well taken and is aptly demonstrated here. Further investigation indicated considerable factual changes over time -- changes that led to prosecution on a different basis from that originally contemplated in the March Letter of Investigation. We would, finally, note that, as a practical matter, there is no evidence or even allegation on appeal that the timing of the Administrator's action actually prejudiced respondent's defense.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied; and
2. The 25-day suspension of respondent's commercial pilot certificate shall begin 30 days from the service date of this opinion and order.<sup>4</sup>

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

---

<sup>4</sup> For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(f).